SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1126

CLARA L. WASHINGTON,
Petitioner,

v.

GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY,
Respondent.

PETITION FOR REHEARING

ROBERT W. HAINSWORTH
Counsel for Petitioner
Alvin Building
3710 Holman Avenue
Houston, Texas 77004

FIDELITY PRINTING COMPANY, INC., HOUSTON

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GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY,
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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

To The Honorable Mr. Chief Justice and to the Honorable Mr. Justices of the Supreme Court of the United States:

Petitioner prays that this Court grant rehearing of its order of April 17, 1967, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Supreme Court of Texas in the above captioned case as prayed for in the petition docketed March 7, 1967, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

1. In *Tobin* v. *Garcia and Parr,* 316 S.W. 2d 396 (1958) the Supreme Court of Texas held that "The right to summary judgment was unknown to the common law and exists

only by virtue of rule providing therefor, and in order to be entitled to benefits of such rule, all of its terms must be complied with. Rules of Civil Procedure, rule 166-A".

And in *Gardner* v. *Martin, et al,* 345 S.W. 2d 274, (1961), the Supreme Court of Texas held: "Summary judgment is possible only by virtue of rule of court, and to entitle party thereto, provisions of the rule must be strictly complied with. Rules of Civil Procedure, rule 166-A".

Therefore by the decisions of the Supreme Court of Texas, the granting by the trial court of the motion for summary judgment to respondent against petitioner, when the petitioner had only 9 days notice of such motion for summary judgment, (Tr 33, 34, 35, 36, 41) was arbitrary, and deprived petitioner of property without due process of law and has denied to petitioner the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, for under rule 166-A, petitioner was entitled to 10 days notice of such motion for summary judgment, and the rule must be strictly complied with, for a party to be entitled thereto.

That the violation of a right guaranteed by the Constitution of the United States, to a citizen of the United States, by a State, through a State official, presents a substantial federal question.

2. For the state trial court to grant a motion for summary judgment to the movant on only 9 days notice to the opposite party when the rule of civil procedure requires 10 days notice was fundamental error, for the motion for summary judgment was not ripe for hearing, and the state trial court did not have jurisdiction of the subject matter and would not have jurisdiction of the subject matter until after 10 days notice to the petitioner of the motion for summary judgment. In *Ramsey* v. *Dunlop,* 205 S.W. 2d 979, the

Supreme Court of Texas held: "Appellate courts may consider fundamental errors though they are not assigned."

3. The assertion of Federal rights when plainly and reasonably made is not to be defeated under the name of local practice. *Davis, Director General of Railroads* v. *Wechsler,* 263 U.S. 22, 24.

It is within the province of the Supreme Court of the United States to inquire not only whether the Federal right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without fair or substantial support. *Ward et al* v. *Board of County Com'rs of Love County, Okla.,* 253 U.S. 17, 40 Sup. Ct. 419; *Postal Telegraph Cable Co.* v. *City of Newport, Ky.,* 247 U.S. 464, 38 Sup. Ct. 566.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, and in the reply brief of petitioner, which may not have been received in time to be submitted to the Court, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Texas.

ROBERT W. HAINSWORTH
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

ROBERT W. HAINSWORTH
Counsel for Petitioner